

# ATTACHMENT A: FINDINGS AND CONCLUSIONS

## CITY OF KELSO SHORELINE MASTER PROGRAM PERIODIC REVIEW AMENDMENT

SMP Submittal accepted December 1, 2021, Ordinance No. 21-3970  
Prepared by Department of Ecology on April 12, 2022

### Introduction

The Department of Ecology (Ecology) *Findings and Conclusions* (presented herein as Attachment A), provides the factual basis for our decision on the City of Kelso's (City) Shoreline Master Program (SMP) periodic review amendment. This document is divided into three sections: **Findings of Fact** regarding the amendment history and the review process, **Conclusions of Law**, and **Decision and Effective Date** of the amendment.

### Brief Description of Proposed Amendment

Kelso is undergoing a statutorily required periodic review of their SMP and has submitted an amendment to Ecology for review and approval. The City opted to use the standard review process in WAC 173-26-100 for this periodic review and associated amendment.

## FINDINGS OF FACT

### Need for amendment

Kelso comprehensively updated their master program in May 2016. The proposed amendment is needed to comply with the statutory deadline for a periodic review of the SMP pursuant to RCW 90.58.080(4). The amendment will bring the SMP into compliance with requirements of the Shoreline Management Act, or state rules that have been added or changed since the comprehensive update, ensure the SMP remains consistent with amended comprehensive plans and regulations, and incorporate revisions deemed necessary to reflect changed circumstances, new information, or improved data.

### SMP provisions to be changed by the amendment as proposed

The City prepared a checklist and an analysis documenting the proposed amendment. Kelso's SMP is a standalone document containing goals, policies and regulations. The SMP goals and policies are considered an element of the City's Comprehensive Plan. All other portions of the SMP are part of the City's development regulations. The Official Shoreline Designation Map is located in SMP Appendix B. Critical area regulations are located in SMP Appendix C.

The SMP regulates shoreline uses and activities along shorelines within city limits including the Columbia River, Cowlitz River, Coweeman River, and Owl Creek. The Columbia and Cowlitz Rivers are also classified as Shorelines of Statewide Significance per RCW 90.58.030.

In addition to general edits to correct and update syntax, formatting and citation corrections, the following specific SMP sections are proposed to be amended:<sup>1</sup>

#### *Chapter 2 Definitions*

A definition for the term "date of filing" is added. Revisions are made to the following definitions: Development, floodway, and substantial development.

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<sup>1</sup> All references are to section numbering in the revised locally adopted SMP as submitted for Ecology review.

### *Chapter 3 Applicability, Exemptions, and Prohibited and Nonconforming uses*

- Reference to WAC 173-27-044 is added to Section 3.1 Applicability
- Reference to Appendix E is added to Section 3.2 Exemptions from a Shoreline Substantial Development permit

### *Chapter 8 Shoreline Administration and Enforcement*

New section 8.8 Permit Filing is added to describe the permit filing process and appeal period consistent with RCW 90.58.140(6).

### *Appendix C Shorelines Critical Areas Regulations*

The following revisions are proposed to the critical areas provisions contained in Appendix C:

- 2.B Wetland Rating. Updates references to the 2014 Wetland Rating System (Ecology Publication #14-06-029) and revises the associated rating system scores.
- 2.D Wetland Buffers. Revisions throughout this section update the critical areas regulations consistent with Ecology's 2016 CAO guidance, including incorporating provisions for Habitat Corridors for wetlands that score 6 or more points for habitat functions and updating the wetland buffer table [Table 1-A].
- 4 Frequently Flooded Critical Areas. Updates references to frequently flooded areas chapter in CAO, from Chapter 18.12 to Chapter 17.26 KMC.

### *Appendix E Exemptions from a Shoreline Substantial Development Permit*

- Updated cost threshold for substantial development consistent with WAC 173-27-040 (2)(a).
- Updated cost threshold for building freshwater docks listed in WAC 173-27-040 (2)(h)(ii).
- Added retrofitting existing structures for ADA compliance from WAC 173-27-040(2)(q).

## Amendment History, Review Process

### *Local SMP Amendment Process*

The City prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines. An important element of the public participation plan is the City's SMP Periodic Review project [website](https://www.kelso.gov/planning/long-range-planning#Shoreline%20Master%20Plan%202016)<sup>2</sup>. The City's public meetings were held virtually using Zoom. All meetings addressing this topic were held jointly with the Planning Commission and City Council. A public hearing was held November 2, 2021. Notice of the hearing was published in *The Daily News* on October 13, 2021.

The City used Ecology's Periodic Review checklist of legislative and rule amendments to review amendments to chapter 90.58 RCW and department guidelines that have occurred since the master program was comprehensively updated, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The City also reviewed changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii). The City considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii). The City consulted with Ecology and solicited comments throughout the review process including opportunities to comment on draft materials.

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<sup>2</sup> <https://www.kelso.gov/planning/long-range-planning#Shoreline%20Master%20Plan%202016>

The record indicates the City completed a State Environmental Policy Act (SEPA) checklist for the proposed amendments to the SMP and issued a Determination of Non-Significance (DNS) on August 6, 2021. Notice of the DNS was published in *The Daily News* on August 7, 2021. The City provided 60-day Notice of Intent to Adopt to the Department of Commerce on September 1, 2021.

With passage of Ordinance No. 21-3970 on November 16, 2021, the City Council authorized staff to forward the proposed amendment to Ecology for formal review.

#### *Ecology SMP Amendment Review and Approval Process*

The proposed SMP amendment was received by Ecology for state review on November 24, 2021, with additional materials submitted November 29 and 30, 2021. Ecology verified the submittal as complete on December 1, 2021. This began our formal review and decision making process per WAC 173-26-120.

When the local government opts to use the standard process of WAC 173-26-100, Ecology must follow the procedures of WAC 173-26-120(2) to provide reasonable notice and opportunity for written comment. Ecology distributed notice of the state comment period via email to state and local interested parties identified by the City on December 7, 2021. The Cowlitz Indian Tribe, Yakama Nation, and Confederated Tribes of Grand Ronde were individually notified and invited to comment. Notice of the comment period, including a description of the proposed amendments and the authority under which the action is proposed along with the manner in which interested persons may obtain copies and present their views, was provided on Ecology's [website](#)<sup>3</sup> and as part of the written notice.

The state comment period began on December 20, 2021 and continued through January 21, 2022. No comments were received on the proposed amendment.

At the conclusion of our formal review, Ecology's Director must decide to approve the amendment as submitted, approve it with required and/or recommended changes, or deny approval.

## Consistency Review

### *Consistency with Chapter 90.58 RCW*

The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

### *Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)*

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This included review of a SMP Periodic Review Checklist, which was completed by the City.

### *Consistency with SEPA Requirements*

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) on August 6, 2021 for the proposed SMP amendments. The record indicates notice of the DNS was published in *The Daily News* on August 7, 2021.

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<sup>3</sup> <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/State-approved-Shoreline-Master-Programs/Kelso>

## CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City proposed amendment is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions).

Ecology concludes that the proposed amendment satisfies the criteria for approval of amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendment will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(1)(c)(i)) and will assure no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(1)(c)(iv) and WAC 173-26-186(8)).

Ecology concludes that those SMP segments relating to shorelines of statewide significance continue to provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and WAC 173-26-100 regarding public and agency involvement in the SMP review and amendment process, including conducting public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-100, and WAC 173-26-110.

Ecology concludes that we have complied with the state's procedural requirements for review and approval of shoreline master program amendments as set forth in RCW 90.58.090, WAC 173-26-100, WAC 173-26-110, and WAC 173-26-120.

Ecology concludes that with this action the City has completed the required process for periodic review in accordance with RCW 90.58.080(4) and applicable state guidelines (WAC 173-26).

## DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed SMP amendments are consistent with Shoreline Management Act policy, the applicable guidelines and the implementing rules. With this approval, Ecology affirms the City has completed the requirement for a periodic review under RCW 90.58.080(4). Ecology approval of the proposed amendments is effective 14 days from Ecology's final action approving the amendment.